



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2011

Ms. Michele Tapia  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5<sup>th</sup> Floor  
Dallas, Texas 75202

OR2011-11178

Dear Ms. Tapia:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 425933.

The Dallas County Constable Precinct 5 (the "constable") received a request for the personnel file of a named former deputy. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under section 552.101 of the Government Code in conjunction with federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). We note the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the "DPS") under subchapter C of chapter 521 of the Transportation Code.

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

*See id.* § 411.082(2). We also note a criminal justice agency may disclose to the public CHRI “that is related to the offense for which a person is involved in the criminal justice system.” *Id.* § 411.081(b). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b). We note CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). The constable must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with the federal law and subchapter F of chapter 411 of the Government Code. We conclude none of the remaining information at issue is confidential under section 552.101 in conjunction with the federal law or subchapter F of chapter 411 of the Government Code, and it may not be withheld on this basis.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the public availability of an F-5 form (“Report of Separation of Licensee”) submitted to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”) under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. You assert some of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. You seek to withhold an L-1 form pursuant to section 1701.454. However, L-1 forms are not required to be filed with TCLEOSE pursuant to subchapter J of chapter 1701. Therefore, the L-1 form may not be withheld under

section 552.101 in conjunction with section 1701.454 of the Occupations Code. Furthermore, none of the remaining information constitutes an F-5 form for purposes of section 1701.454 of the Occupations Code. Thus, the constable may not withhold any of the remaining information pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides the following:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Section 1701.306 specifically applies to the information contained in an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form. Based on our review, we find that the L-2 and L-3 declarations we have marked are confidential under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. Thus, the constable must withhold the information we have marked on that basis.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), chapter 159 of the Occupations Code, which governs access to medical records. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a)-(c); *see also* Open Records Decision No. 598 (1991). Upon review, we find none of the remaining information constitutes a physician-patient communication or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the constable may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 611.002(a) of the Health and Safety Code, which provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* ORD 565. These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Upon review, we find the information we have marked in the remaining information constitutes mental health records that are confidential under section 611.002 of the Health and Safety Code. Access to mental health records is governed by the provisions of sections 611.004 and 611.0045, rather than the Act. Open Records Decision Nos. 598 (1991), 451 at 4 (1986). Therefore, the constable may only release the marked mental health records in accordance with sections 611.004 and 611.0045.

Section 552.101 also encompasses the Americans with Disabilities Act of 1990 (the “ADA”). *See* 42 U.S.C. §§ 12101 et seq. The ADA provides a covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination, provided that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. *See* 42 U.S.C. § 12112(d)(3)(B); *see also* 29 C.F.R.

§ 1630.14(b); Open Records Decision No. 641 (1996). We therefore conclude the constable must withhold the physical examination report we have marked under section 552.101 of the Government Code in conjunction with the ADA.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. This office has determined financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest in this case. We therefore conclude the constable must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."<sup>2</sup> Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). The information we have marked must be withheld under section 552.102(a) of the Government Code.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). As a general rule, section 552.108 is not applicable to a law enforcement agency's personnel records. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) not applicable to documents obtained by police constable for

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

purpose of evaluating applicant's fitness for employment), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990) (predecessor to section 552.108(b) not applicable to employment information in police officer's file). In this instance, however, you contend that the information at issue is related to a pending criminal prosecution by the Dallas County District Attorney's Office (the "district attorney"). You state the constable, the district attorney, and the Dallas County Sheriff's Office object to the release of the information at issue. Based on these representations and our review of the submitted representative sample of information, we conclude that section 552.108(a)(1) is applicable to the information at issue. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the constable may withhold the information we have marked under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, family member information, and emergency contact information, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, the constable must generally withhold the personal information of the named officer, which we have marked, under section 552.117(a)(2) of the Government Code. However, the submitted information reflects that the named officer may no longer be a licensed peace officer. Thus, if the named deputy is currently a licensed peace officer, the constable must withhold his personal information, which we have marked, under section 552.117(a)(2); however if he is no longer a licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

If the named deputy is no longer a licensed peace officer, his personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone numbers, social security number, family member information, and emergency contact information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). The constable may

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

only withhold the named officer's personal information under section 552.117(a)(1) if he elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the named deputy is no longer a licensed peace officer and made a timely election under section 552.024, the constable must withhold his personal information, which we have marked, under section 552.117(a)(1). If the named officer is no longer a licensed peace officer and did not make a timely election under section 552.024, his personal information may not be withheld under section 552.117(a)(1).<sup>4</sup>

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)). The constable must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

We note that we have marked information that is subject to section 552.137 of the Government Code. Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The e-mail address we have marked is not of the type specifically excluded by section 552.137(c). Accordingly, the marked e-mail address must be withheld under section 552.137 of the Government Code unless its owner consented to its disclosure.

In summary, the constable must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with the federal law and subchapter F of chapter 411 of the Government Code. The constable must withhold the L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The constable may only release the marked mental health records in accordance with sections 611.004 and 611.0045. The constable must withhold the physical examination report we have marked under section 552.101 of the Government Code in conjunction with the ADA. The constable must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The information we have marked must be withheld under section 552.102(a) of the Government Code. The constable may withhold the information we have marked under section 552.108(a)(1) of the Government Code. If the named deputy is currently a licensed peace officer, the constable must withhold his personal information, which we have marked, under section 552.117(a)(2). If the named deputy is no longer a

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<sup>4</sup>Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

licensed peace officer and made a timely election under section 552.024, the constable must withhold his personal information, which we have marked, under section 552.117(a)(1). The constable must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The marked e-mail address must be withheld under section 552.137 of the Government Code unless its owner consented to its disclosure.<sup>5</sup> The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 425933

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-2 and L-3 forms under section 552.101 in conjunction with section 1701.306 of the Occupations Code; a Texas driver's license number and a copy of a Texas driver's license under section 552.130 of the Government Code; and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.